

**IN THE UNITED STATE DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

**IN RE: AMERICAN MEDICAL SYSTEMS, INC.  
PELVIC REPAIR SYSTEM  
PRODUCTS LIABILITY LITIGATION**

**MDL 2325**

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DONNA CUTSHAW,

Plaintiff,

v.

CIVIL ACTION NO. 2:13-cv-13307

AMERICAN MEDICAL SYSTEMS, INC.,

Defendant.

**MEMORANDUM OPINION AND ORDER**

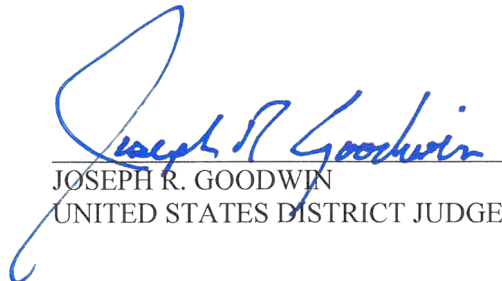
On November 1, 2018, plaintiff's counsel filed a Suggestion of Death noting the death of plaintiff Donna Cutshaw during the pendency of this action [ECF No. 14]. Defendant filed a Motion to Dismiss Plaintiff Donna Cutshaw's Complaint Pursuant to PTO 259 and FRCP 25(a)(1) requesting dismissal of this case because the deceased plaintiff has not been substituted [ECF No. 19], and a Supplemental Motion to Dismiss with Prejudice [ECF No. 21]. There has been no response to the defendant's motions. Additionally, plaintiff's counsel filed a Motion to Voluntarily Dismiss with Prejudice Due to the Death of Plaintiff or in the Alternative, to Excuse Counsel's Attendance at the December 5, 2018 Mandatory Mediation [ECF No. 18]. In the Plaintiff's motion, counsel requests the dismissal of this case with prejudice because counsel had contacted Karen Kalbfeld, Administrator of the Estate of Donna Cutshaw, who informed counsel that the estate will not pursue Ms. Cutshaw's case.

Pretrial Order (“PTO”) # 259 filed in *In re: American Medical Systems, Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, 2:12-md-2325 (“AMS 2325”) [ECF No. 6347] outlines the procedures the court requires to either substitute a deceased party pursuant to Federal Rule of Civil Procedure 25(a), or to dismiss the deceased party from the civil action because of a failure to properly serve and substitute the deceased party.

The court **FINDS** that the Suggestion of Death did not comply with Rule 25(a) as it was never properly served upon non-parties or a personal representative of the estate. Regardless, the time period as set forth in PTO # 289 to substitute a party has since passed. Finally, counsel for Ms. Cutshaw has indicated to the court that the estate does not intend to pursue this civil action. Therefore, the court **ORDERS** that the plaintiff’s Motion to Voluntarily Dismiss with Prejudice Due to the Death of Plaintiff or in the Alternative, To Excuse Counsel’s Attendance at the December 5, 2018 Mandatory Mediation is **GRANTED** to the extent this case is **DISMISSED** with prejudice and **STRICKEN** from the docket of this court, and **DENIED** as to any other relief requested. Any remaining pending motions are **DENIED as moot**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: December 18, 2019



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE